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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/839,715

Applicant(s)

RENINI ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. The Amendment filed October 17, 2003 has been entered. Claim 12 has been cancelled. Claims 1-11,13-68 remain pending in the application.

2. In light of the amendment and arguments, the following rejections have been withdrawn:

- The rejection of claims 1-3, 6-9,14-17,49,51,68 under 35 U.S.C. 102(b) as being anticipated by Katz et al. (US 3851574).
- The rejection of claims 51,54-56,58,60,61, 68 under 35 U.S.C. 102(b) as being clearly anticipated by LaBaw et al. (US 4904488).
- The rejection of claims 51,54,55,56,58 under 35 U.S.C. 102(b) as being anticipated by Jensen et al. (US 5443858) as evident by Watkins et al. (US 5044777).
- The rejection of claims 57 and 59 under 35 U.S.C. 103(a) as being unpatentable over LaBaw et al. (US 4904488), further in view of Katz et al. (US 3851574).
- The rejection of claims 52,53, 62,and 66 under 35 U.S.C. 103(a) as being unpatentable over LaBaw et al. (US 4904488), further in view of Glass (US 5897894).
- The rejection of claim 67 under 35 U.S.C. 103(a) as being unpatentable over LaBaw et al. (US 4904488) in view of Glass (US 5897894), further in Katz et al. (US 3851574).

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,2,4-11,13,49-51,68 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sheu (WO 00/60954).

6. Regarding claims 1,2,10,11,13, 49-51, 68, see Page 9, lines 4-12, Page 8, 8-35, Example B, Page 6, lines 18-29, wherein the phrase "up to 4%" emulsifiers as well as 0.1% emulsifiers is considered substantially free of emulsifiers, and in Example B the oil is component is added with the kernels to the bag separately in the bottom of the bag, while the sugar pellet is added to the middle of the bag (i.e. more of the oil is with the kernels)

7. Regarding claims 4-9, see Page 5 line 17 to Page 6 line 35.

8. Claims 1-3,6-9, 13-15,18-30,34,38,39,49,51,54-58, 60-65, and 68 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Glass (US 5897894).

9. Regarding claims 1,13, 49, 51, and 68 Glass teaches a microwave popcorn bag , unpopped kernels, and a salt pellet, which may either be partly or completely replaced by sugar or an additional of 2% or more sugar(s) may be added along with the salt pellet (Abstract, Column 3, lines 51-67, Column 6, lines 50-64,Column 5, line 65 to

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Column 6, line 1) , wherein the oil may either be added separately *or* with the kernels, resulting in more of the oil with the kernels (Column 8, lines 34-55).

10. Regarding claims 2, see Column 3, lines 51-67, Column 8, lines 50-54.

11. Regarding claim 3, see Column 6, lines 50-64.

12. Regarding claims 6-9, 14-15, see Column 3, lines 41-50, Column 5, line 40 to Column 6, line 6.

13. Regarding claims 18, see Column 4, lines 15-67, Column 7, line 15 to column 8, line 33.

14. Regarding claim 19-21,30,55,56,58 see Column 4, lines 48-54 wherein the susceptor *may* be attached to *every* surface.

15. Regarding claims 22-29, 34,38,39,57 see Column 3, line 43-48 in light of Column 6, lines 60-64.

16. Regarding claims 54 and 60, see Column 4, lines 48-53, Column 7, lines 48-55.

17. Regarding claims 61-63,see Column 7, lines 23-28, Column 8, lines 34-50 (i.e. oil and kernels are filled first and are located closer to one end than the pellets) , and Column 8, lines 21-33, respectively.

18. Regarding claims 64 and 65, see example ,Column 3, lines 51-67, Column 6, lines 50-64.

Claim Rejections - 35 USC § 103

19. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

20. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheu (WO 00/60954) as applied to claims 1,2,4-11,49-51,68, further in view of Katz et al. (US 3851574).

21. Regarding claim 16, although Sheu teaches the microwave bag is made from paper and oil serves as heat sink to heat the popcorn (Page 1, lines 34-39), Sheu does not expressly teach that the bag is without a susceptor.

22. Katz also teaches a sugar/oil/popcorn composition heated in a microwavable bag. Katz teaches the paper based bag is non-metallic (i.e. without a microwave susceptor) material (Column 1, line 58 to column 2, line 7 Column 2, line 43-57, Figures, Column 5, lines 23-30). Therefore, it would have been obvious to modify Sheu and not use a susceptor since Katz teaches metal-free bags are suitable for preparing sugar/oil/kernel compositions in the microwave, and one would have been substituting one conventional microwavable paper-based bag for another for the same purpose.

23. Regarding claim 17, Sheu teaches 10-70% sugar pellets in the composition (See Example B) .

24. Claims 18-30,34-43,45,46,54-63,65, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheu (WO 00/60954) as applied to claims 1,2,4-11,49-51,68, further in view of Monsalve (US 5919505).

25. Regarding claims 18-21,30,41-43,54-56,58,60-63, Sheu teaches a microwave paper based bag with a top, middle and bottom section with the sugar pellet closer to the top than the kernels and oil as recited in claim 43 and 62(Example B, Page 1, lines

34-39) and wherein the entire composition is contained within the middle portion as recited in claims 42,43,61,62 when added simultaneously (Example A), but is silent in teaching the bag includes a susceptor as recited in claim 18 , 54, and 63 positioned over at least 40% or 50% of the length of the bottom surface of the bag as recited in claims 19-21,55,56, at least 90% of the width of the bag as recited in claim 30, or the entire middle section as recited in claim 44 and 58, the bag is folded in to equal portions as recited in claim 41, 60, the entire composition is substantially in the middle when added the sugar pellets are added separately, as recited in claims 42,43,61, 62.

26. Monsalve teaches a conventional microwave popcorn paper-based bag can include two layers with a susceptor layer between over the entire length and width of the bag, folded into thirds and filled the bottom section folded such that the middle contains the composition as recited in claims 18-21,30,41-43,54-56,61-63 (Column 3, line 43 to Column 4, line 13, Column 7, lines 1-24).

27. Therefore, it would have been obvious to modify Sheu using the bag of Monsalve since Monsalve teaches the conventional microwave popcorn bag comprises a susceptor as recited in claim 18 , 54, and 63 positioned over at least 40% or 50% of the length of the bottom surface of the bag as recited in claims 19-21,55,56, at least 90% of the width of the bag as recited in claim 30, the entire middle section as recited in claim 44, the bag is folded in to equal portions as recited in claim 41, the entire composition is substantially in the middle, as recited in claims 42,43,61. One would have been substituting one conventional microwave popcorn bag for another.

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28. Regarding claims 22-29,34-40,45,46,57,59,65, Sheu teaches 20-60% kernels (Page 5, lines 23-27), as recited in claims 22,23,28,29,34,35,40, 45,46,57, 64,65, 13% fat (Example B) as recited in claim 26,28,45,57,64, and 40-80% sugar pellets (Abstract). Sheu teaches the fat may be included with the pellet or with the kernels (i.e. Example A versus Example B). Although Sheu teaches one may reduce the amount of sugar pellet depending on the type of pellet select as well as the desired level of sweetness, and the overall composition may be high fat, low fat or no-fat (Page 5, lines 36-39, Page 6, lines 8-13), Sheu is silent in explicitly teaching anywhere in the range of 1-35% sugar pellets as recited in claims 24,25,28,29,36,37,40,45,46,57,59,64,65, and a fat level anywhere in the range of 20-50% as recited in claims 27,29,38,39,40,46,59,65

29. Monsalve is relied on as evidence of the particular fat level associated with high fat, reduced fat, and low fat popcorn products, wherein low fat is 2-8% fat, reduced fat is 8-15% and high fat is 25-40% (Column 4, line 67 to Column 5, line14). Therefore to select any particular fat level between 20% and 50% would have been an obvious result effective variable of the desired fat level of the product since Sheu teaches the composition may be high fat, low fat, or fat-free, and Monsalve teaches low fat popcorn products have 2-8% fat, reduced fat popcorn has 8-15% and high fat popcorn has 25-40%. Furthermore to select any particular amount of sugar pellet less than 40%, would have been an obvious result effective variable of (1) the type of pellet selected and (2) the desired sweetness since Sheu teaches the amount of sugar pellet added to the composition depends on these two variables.

30. Claims 47, 48, 66, and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheu (WO 00/60954) further in view of Monsalve (US 5919505), as applied to claims 18-30, 34-43, 45, 46, 54-57, 61-65, above, further in view of Glass (US 5897894) and LaBaw et al. (US 4904488).

31. Regarding claims 47 and 66, modified Sheu teaches a three portion bag with the majority of the sugar pellets in the middle region (Sheu teaches sugar pellets in the middle of a bag in Example B), but are silent in teaching the susceptor covers less than 90% of the middle region.

32. Glass teaches a three portion microwave popcorn bag with ingredients in the middle, and further teaches for economic reasons, a susceptor may be attached to one major face so that the susceptor area is smaller than the non-susceptor area (Column 6, lines 21-34, Column 8, lines 21-34).

33. LaBaw et al. also teach a three portion bag with the ingredients in the middle section, teach the number of unpopped kernels remaining in a three-part bag is reduced when most of the bottom surface of the bag (i.e. the middle portion of the bag in touch with the microwave base that contains the ingredients) is covered by susceptor (See items 30 and 130 in Figures 4, 5, 10, 11, Column 9, lines 15-26).

34. Therefore to select a susceptor length of less than 90% of the length of the middle section would have been an obvious result effective variable (1) the number of unpopped kernels desired after popping versus the economic benefits of reducing the susceptor length since LaBaw et al. teach to minimize the number of unpopped kernels one must maximize the susceptor relative to the portion of the bag holding the

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ingredients (i.e. the middle portion) yet Glass teaches minimizing the size of the susceptor for economic reasons. One would have been substituting one conventional microwave popcorn bag for another.

35. Regarding claims 48 and 67, Sheu teaches 20-60% kernels (Page 5, lines 23-27), as recited in claims 48 and 67, 13% fat (Example B) and 40-80% sugar pellets (Abstract). Sheu teaches the fat may be included with the pellet or with the kernels (i.e. Example A versus Example B). Although Sheu teaches one may reduce the amount of sugar pellet depending on the type of pellet select as well as the desired level of sweetness, and the overall composition may be high fat, low fat or no-fat (Page 5, lines 36-39, Page 6, lines 8-13), Sheu is silent in explicitly teaching anywhere in the range of 1-35% sugar pellets as recited in claims 48 and 67 and a fat level anywhere in the range of 20-50% as recited in claims 48 and 67.

36. Monsalve is relied on as evidence of the particular fat level associated with high fat, reduced fat, and low fat popcorn products, wherein low fat is 2-8% fat, reduced fat is 8-15% and high fat is 25-40% (Column 4, line 67 to Column 5, line 14). Therefore to select any particular fat level between 20% and 50% would have been an obvious result effective variable of the desired fat level of the product since Sheu teaches the composition may be high fat, low fat, or fat-free, and Monsalve teaches low fat popcorn products have 2-8% fat, reduced fat popcorn has 8-15% and high fat popcorn has 25-40%. Furthermore to select any particular amount of sugar pellet less than 40%, would have been an obvious result effective variable of (1) the type of pellet selected and (2)

the desired sweetness since Sheu teaches the amount of sugar pellet added to the composition depends on these two variables.

37. Claims 52 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheu (WO 00/60954) as applied to claims 1,2,4-11,49-51,68.

38. Sheu teaches adding the sugar pellets separately after adding the kernel/oil mixture to the bag or adding all three main components simultaneously to the bag to achieve the same desired product (Examples A and B). Therefore, to select any particular order of addition, such as adding the sugar pellets before the oil or kernels as recited in claims 52 and 53 would have been an obvious matter of choice, since Sheu teaches the order of addition does not change the end product.

39. Claims 31-33,41-47,66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glass (US 5897894) as applied to claims 1-3,6-9,14-15,18-30,34,38,39,49,51,54-58, 60-65, and 68 above, further in view of LaBaw et al. (US 4904488).

40. Regarding claims 31-33, Glass teaches the microwave susceptor extends across the entire bag (Column 4, lines 48-54). Glass also teaches, for economic reasons, it may be attached to one major face so that the susceptor area is smaller than the non-susceptor area (Column 6, lines 21-34, Column 8, lines 21-34),but is silent teaching it should be 25-50% the length of the bag as recited in claim 31, 30-40% the length as recited in claim 32, or 75-85% the width of the bag as recited in claim 33.

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41. LaBaw et al. also teach a three part microwave popcorn bag wherein the susceptor is less than the entire length of the bag, and greater than 33%. LaBaw et al. further teach the number of unpopped kernels remaining in a three-part bag is reduced when most of the bottom surface of the bag (i.e. the portion of the bag in touch with the microwave base) is covered by susceptor (See items 30 and 130 in Figures 4,5,10,11, Column 9, lines 15-26). Therefore, it would have been obvious to select a length between 25 and 50% of the bag since LaBaw et al. clearly show in the Figures greater than around 33%. Further, to select any particular length susceptor relative to the length of the bag would have been an obvious result effective variable of the particular length of the bottom surface relative the length of the bag since LaBaw et al. teach to minimize the number of unpopped kernels one must maximize the length of the susceptor relative to the length of the bottom surface. Furthermore, to select any particular width of susceptor relative to the width of the bag would have been an obvious result effective of the number of unpopped kernels allowed since LaBaw et al. teach to minimize the number of unpopped kernels one must maximize the width of the susceptor relative to the width of the bottom surface.

42. Regarding claims 41-44, Glass teaches three portions with the kernels, wherein as recited in claim 41 (Column 4, lines 48-53, Column 7, lines 48-55) with the ingredients contained within the middle as recited in claim 42 (Column 7, lines 23-28), the oil and kernels are filled first and are located closer to one end than the pellets as recited in claim 43 (Column 8, lines 34-50), and the susceptor covers substantially the

entire length of the middle (Column 8, lines 21-33) as recited in claim 44. However, Glass does not expressly teach three *equal* sections as recited in claim 41.

43. LaBaw et al. teach a three-part microwave popcorn bag, wherein the ingredients are held in the center, conventional is folded into thirds (Column 4, lines 15-44).

Therefore, it would have been obvious to modify Glass and include three equal portion since LaBaw et al. teach this is the conventional manner for folding a three-portion bag with the ingredients in the middle portion.

44. Regarding claims 45 and 46, Glass teaches 60-97% unpopped kernels, 2-40% oil, and 1-4% of a salt pellet, which may either be partly or completely replaced by sugar or an additional sugar pellet may be added along with the salt pellet (Abstract, Column 3, lines 41-67, Column 5, line 20 to Column 6, line 6, Column 6, lines 50-64).

45. Regarding claim 47 and 66, Glass teaches that it is beneficial, for economic reasons, to minimize the size of the susceptor wherein the susceptor may be on only one face of the bag, the susceptor area should be smaller than the non-susceptor area, and the susceptor area should be limited to where the kernel, popcorn, fat, and pellets are charged, which is a middle section of a three-part bag (Column 4, lines 29-60, Column 7, lines 48-55, Column 8, lines 21-33). However, Glass is silent in teaching the susceptor is less than 90% of length of the middle section as recited in claims 47 and 66.

46. LaBaw et al. , who also teach a three portion bag with the ingredients in the middle section, teach the number of unpopped kernels remaining in a three-part bag is reduced when most of the bottom surface of the bag (i.e. the middle portion of the bag

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in touch with the microwave base that contains the ingredients) is covered by susceptor (See items 30 and 130 in Figures 4,5,10,11, Column 9, lines 15-26).

47. Therefore to select a susceptor length of less than 90% of the length of the middle section would have been an obvious result effective variable the number of unpopped kernels desired after popping versus the economic benefits of reducing the susceptor length since LaBaw et al. teach to minimize the number of unpopped kernels one must maximize the susceptor relative to the portion of the bag holding the ingredients (i.e. the middle portion) yet Glass teaches minimizing the size of the susceptor for economic reasons.

Response to Arguments

48. Applicant's arguments filed October 17,2003 have been fully considered but they are not persuasive with respect to Sheu and Glass.

49. With respect to Sheu, applicant's direction is directed to Example B, where the kernels and oil are first added to the bottom of a microwavable bag and the sugar pellet is added to the middle portion of the bag (i.e. the oil remains mainly with the kernels).

50. With respect to Glass, applicant's attention is directed to and. Glass teaches the oil and kernels may be added either separately or together , followed by the separate addition of salt pellet(Column 8, lines 34-55), which may be fully substituted by sugar (Column 6, lines 60-64). While Glass teach levels of sugar less than 0.5% as a preferred embodiment, Glass does teach "fully" substituting sugar for salt (at 1-4%) and also suggests adding 0.1-2% or more for sugar (Column 6, lines 60-64, Column 5, line

65 to Column 6, line 1). Applicant is reminded that "[d]isclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments." (In re Susi, 440 F.2d 442, 169 USPQ 423 (CCPA 1971).) Additionally it is noted that the claims anticipated by Glass do not recite any particular level of sugar in the overall food composition, but rather recite a percent of sugar in a pellet. Since Glass teaches the sugar replaces the salt pellet in full, the "pellet" would comprise 100% sugar.

51. Applicant's arguments with respect to the claims rejected by the combination of either Watkins or Grunewald Kirstein have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

52. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

53. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

54. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

55. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

56. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.


MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

Robert Madsen
Examiner
Art Unit 1761

